

BILL LOCKYER, Attorney General
of the State of California
E. A. JONES III, State Bar No. 71375
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2543
Facsimile: (213) 897-1071
Attorneys for Complainant

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JOHN L. FOX, PT
55206 Airline 11C
Yucca Valley, CA 92284

Physical Therapist License No. PT 26110
Physical Therapy Assistant License No. AT 3875

Respondent.

Case Nos. 1D 2003 63484 & 1D 2004
64065

**FIRST AMENDED
A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this First Amended Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.
2. On or about April 11, 2001, the Physical Therapy Board of California issued Physical Therapist License Number PT 26110 to John L. Fox, PT (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and expires on June 30, 2006. On or about May 22, 1995, the Physical Therapy Board issued Physical Therapy Assistant License Number AT 3875 to respondent. The Physical Therapist Assistant License expired on June 30, 2002, and is now delinquent.

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3. This First Amended Accusation is brought before the Physical Therapy

The board shall issue, suspend, and revoke licenses and approvals to practice
l therapy as provided in this chapter.

It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked license issued under this chapter.

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any certificate, or approval issued under this chapter for any of the following causes:

- 2

1 (h) Gross negligence in his or her practice as a physical therapist.

2 (i) Conviction of a violation of any of the provisions of this chapter or of
3 the State Medical Practice Act, or violating, or attempting to violate, directly or
4 indirectly, or assisting in or abetting the violating of, or conspiring to violate any
5 provision or term of this chapter or of the State Medical Practice Act.

6 (j) The aiding or abetting of any person to violate this chapter or any
7 regulations duly adopted under this chapter.

8 (k) The aiding or abetting of any person to engage in the unlawful practice
9 of physical therapy.

10 (l) The commission of any fraudulent, dishonest, or corrupt act which is
11 substantially related to the qualifications, functions, or duties of a physical
12 therapist.

13 (m) Except for good cause, the knowing failure to protect patients by
14 failing to follow infection control guidelines of the board, thereby risking
15 transmission of blood-borne infectious diseases from licensee to patient, from
16 patient to patient, and from patient to licensee. In administering this subdivision,
17 the board shall consider referencing the standards, regulations, and guidelines of
18 the State Department of Health Services developed pursuant to Section 1250.11 of
19 the Health and Safety Code and the standards, regulations, and guidelines
20 pursuant to the California Occupational Safety and Health Act of 1973 (Part 1
21 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing
22 the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health
23 care settings. As necessary, the board shall consult with the Medical Board of
24 California, the California Board of Podiatric Medicine, the Board of Dental
25 Examiners of California, the Board of Registered Nursing, and the Board of
26 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
27 consistency in the implementation of this subdivision.

28 The board shall seek to ensure that licensees are informed of the

responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

7. Section 2661 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

8. California Code of Regulations, title 16, section 1399.20, states:

“For the purposes of denial, suspension or revocation of a license or approval, pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license or approval under the Physical Therapy Practice Act if to a substantial degree it evidences present or potential unfitness of a person to perform the functions authorized by the license or approval in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Physical Therapy Practice Act.

“(b) Conviction of a crime involving fiscal dishonesty arising out of or in connection with the practice of physical therapy.

1 “(c) Violating or attempting to violate any provision or term of the
2 Medical Practice Act.”

3 9. Section 490 of the Code states:

4 “A board may suspend or revoke a license on the ground that the licensee has
5 been convicted of a crime, if the crime is substantially related to the qualifications,
6 functions, or duties of the business or profession for which the license was issued. A
7 conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action which a board is permitted to
9 take following the establishment of a conviction may be taken when the time for appeal
10 has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
11 granting probation is made suspending the imposition of sentence, irrespective of a
12 subsequent order under the provisions of Section 1203.4 of the Penal Code.”

13 10. Section 493 of the Code states:

14 “Notwithstanding any other provision of law, in a proceeding conducted by a
15 board within the department pursuant to law to deny an application for a license or to
16 suspend or revoke a license or otherwise take disciplinary action against a person who
17 holds a license, upon the ground that the applicant or the licensee has been convicted of a
18 crime substantially related to the qualifications, functions, and duties of the license in
19 question, the record of conviction of the crime shall be conclusive evidence of the fact
20 that the conviction occurred, but only of that fact, and the board may inquire into the
21 circumstances surrounding the commission of the crime in order to fix the degree of
22 discipline or to determine if the conviction is substantially related to the qualifications,
23 functions, and duties of the licensee in question.

24 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
25 ‘registration.’”

26 11. California Code of Regulations, title 16, section 1398.6, states:

27 “(a) Each licensee shall report to the board each and every change of
28 residence address within 30 days after each change, giving both the old and new

1 address. In addition to the address of residence, a licensee may provide the board
2 with an alternate address of record. If an alternate address is the licensee's address
3 of record, he or she may request that the residence address not be disclosed to the
4 public.

5 “(b) Each licensee shall report to the board each and every change of name
6 within 30 days after each change, giving both the old and new names.

7 “(c) For purposes of this section, "licensee" includes any holder of an
8 active, delinquent, suspended or expired license, approval, certification or other
9 authorization issued by the board to practice physical therapy or electromyography
10 which is not canceled or revoked.”

11 12. Section 2661.5 of the Code states:

12 (a) In any order issued in resolution of a disciplinary proceeding before
13 the board, the board may request the administrative law judge to direct any
14 licensee found guilty of unprofessional conduct to pay to the board a sum not to
15 exceed the actual and reasonable costs of the investigation and prosecution of the
16 case.

17 (b) The costs to be assessed shall be fixed by the administrative law judge
18 and shall not in any event be increased by the board. When the board does not
19 adopt a proposed decision and remands the case to an administrative law judge,
20 the administrative law judge shall not increase the amount of the assessed costs
21 specified in the proposed decision.

22 (c) When the payment directed in an order for payment of costs is not
23 made by the licensee, the board may enforce the order of payment by bringing an
24 action in any appropriate court. This right of enforcement shall be in addition to
25 any other rights the board may have as to any licensee directed to pay costs.

26 (d) In any judicial action for the recovery of costs, proof of the board's
27 decision shall be conclusive proof of the validity of the order of payment
28 and the terms for payment.

1 (e) (1) Except as provided in paragraph (2), the board shall not renew
2 or reinstate the license or approval of any person who has failed to pay all
3 of the costs ordered under this section.

4 (2) Notwithstanding paragraph (1), the board may, in its
5 discretion, conditionally renew or reinstate for a maximum of one year the
6 license or approval of any person who demonstrates financial hardship and
7 who enters into a formal agreement with the board to reimburse the board
8 within that one year period for those unpaid costs.

9 (f) All costs recovered under this section shall be deposited in the
10 Physical Therapy Fund as a reimbursement in either the fiscal year in
11 which the costs are actually recovered or the previous fiscal year, as the
12 board may direct.

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Conviction of a Crime)

15 13. Respondent is subject to disciplinary action under sections 2660 subd. (d),
16 2661, 490, and 493 of the Code and California Code of Regulations Title 16, section 1399.20, in
17 that respondent was convicted of a crime substantially related to the qualifications, functions, or
18 duties of a physical therapist. The circumstances are as follows:

19 A. On or about June 16, 2003, respondent went to his ex-wife's residence
20 looking for his cell phone. At the time, only the babysitter and respondent's son were at
21 the residence. Respondent knocked on the door and was met by his son. The babysitter
22 told respondent not to enter the residence but respondent pushed the door open and
23 proceeded toward the kitchen. Respondent then telephoned his ex-wife, telling her that
24 he wanted his cell phone back and if she did not return it he would take something of
25 hers. After hanging up the phone, respondent walked towards his ex-wife's room and
26 took her small gray safety deposit box and blue sapphire pendant. He then left the house
27 with both of these items telling the babysitter, "You can go ahead and call 911. I don't
28 care."

1 B. On or about June 16, 2003 Deputy Dieckhoff of the County of San
2 Bernardino's Sheriff's Department went to respondent's place of employment. Deputy
3 Dieckhoff met with respondent and asked him where the pendant and safety deposit box
4 were located. Respondent told Deputy Dieckhoff that the pendant was at his residence
5 and the safety deposit box was located inside his truck out in the parking lot.

6 C. On or about June 16, 2003 respondent was arrested by the County of San
7 Bernardino Sheriff's Department for burglary.

8 D. On or about August 12, 2003, in case number FMB006022 of the Superior
9 Court of the State of California, County of San Bernardino, Joshua Tree District, in the
10 matter of *The People of the State of California v. John Logan Fox*, the court accepted a
11 plea bargain. Respondent was convicted by plea of *nolo contendere* of Unauthorized
12 Entry of a Dwelling (Pen. Code §602.5 subd. (a)) and the court dismissed the following
13 counts against respondent:

14 Count 1 - First Degree Residential Burglary (Pen. Code §459);

15 Count 2 - Attempted Extortion (Pen. Code §524);

16 Count 3 - Grand Theft of Personal Property (Pen. Code §487 subd. (a)); and

17 Count 4 - Dissuading a Witness from Prosecuting a Crime (Pen. Code §136.1
18 subd. (b)(2)).

19 E. As a result of this conviction, on or about August 12, 2003, respondent
20 was placed on probation for a period of 36 months under the following terms and
21 conditions: (1) violate no law other than minor traffic; (2) pay \$110.00 to Victim
22 Restitution Fund to the Court by October 15, 2003, including a 10% administration fee;
23 (3) serve thirty days in a San Bernardino County Jail Facility, with credit for time served
24 of 7 day(s), the balance is to be served in consecutive 48 hour periods from 6:00pm
25 Friday to 6:00pm Sunday, commencing on September 12, 2003; (4) attend and complete a
26 sixteen week Anger Management Program, enroll by September 2, 2003 and submit proof
27 of completion to the court by January 14, 2004; (5) have no contact with the victim, his
28 ex-wife, Lynette Fox, nor be within 100 yards of her home or person; and (6) complete

1 250 hours of Community Service by August 12, 2006.

2 F. The conviction of the crime of Unauthorized Entry of a Dwelling is
3 substantially related to the qualifications, functions, or duties of a physical therapist.

4 **SECOND CAUSE FOR DISCIPLINE**

5 (Conviction of a Crime)

6 14. Respondent is subject to disciplinary action under sections 2660 subd. (d),
7 2661, 490, and 493 of the Code and California Code of Regulations Title 16, section 1399.20, in
8 that respondent violated a term of his probation for his prior conviction of Unauthorized Entry of
9 a Dwelling (Pen. Code §602.5 subd. (a)). On or about January 9, 2004, respondent violated the
10 probation term where he was subject to a restraining order requiring him to stay away from his
11 ex-wife.

12 A. On or about April 7, 2004, in case number MMB009470 of the Superior
13 Court of the State of California, County of San Bernardino, Joshua Tree District, in the
14 matter of *The People of the State of California v. John Logan Fox*, respondent was
15 convicted by plea of *nolo contendere* of Disobeying a Court Order (Pen. Code §166 subd.
16 (a)(4)), the offense charged in the complaint filed on January 29, 2004.

17 B. As a result of this conviction, on or about April 7, 2004, respondent was
18 placed on probation for a period of 36 months under the following terms and conditions:
19 (1) violate no law other than minor traffic; (2) pay \$110.00 to the Victim Restitution Fund
20 to the Court by June 1, 2004, including a 10% administration fee; (3) serve 180 days in
21 county jail, suspended pending successful completion of probation; and (4) have no
22 contact with the victim, his ex-wife, Lynette Fox, nor be within 100 yards of her
23 residence, employment or education.

24 C. The conviction of the crime of Disobeying a Court Order is
25 substantially related to the qualifications, functions, or duties of a physical therapist.

26 **THIRD CAUSE FOR DISCIPLINE**

27 (Failure to Notify Board of Change of Address)

28 15. Respondent is subject to disciplinary action under section 2660, subd. (i)

1 of the Code and California Code of Regulations Title 16, section 1398.6 subd. (a), in that
2 respondent failed to notify the Physical Therapy Board of California of his change of address
3 within 30 days of the change. The circumstances are as follows:

4 A. On or before January 1, 2004, respondent moved from his Quail Springs
5 address of record with the Board.

6 B. Changes of address must be submitted in writing to the Board within 30
7 days of the change pursuant to California Code of Regulations Title 16, section 1398.6(a).

8 C. Since on or before January 1, 2004, respondent has failed to notify the
9 Board in writing of his change of address.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 (Practicing Without a Valid and Unexpired License)

12 16. Respondent is subject to disciplinary action under section 2630 of the
13 Code in that he practiced physical therapy for compensation received or expected at a time when
14 he did not hold a valid and unexpired license to practice physical therapy issued by the Board.
15 The circumstances are as follows:

16 A. Respondent's Physical Therapy License Number PT 26110 expired on
17 June 30, 2004. Respondent's license was renewed effective September 20, 2004.
18 Between June 30, 2004, and September 20, 2004, respondent did not hold a valid,
19 unexpired, and unrevoked license issued under the Physical Therapy Practice Act.

20 B. On or about October 3, 2002, respondent was hired as the Director of
21 Physical Therapy at Hi Desert Medical Center, a position he held until on or about
22 October 28, 2004, when he resigned from the position of director and accepted a position
23 as a physical therapist. Respondent's duties as director included planning and
24 implementing specific treatment programs for individual patients according to the
25 principles and practices of physical therapy, including providing direct physical therapy to
26 patients and preparing written documentation as required by the profession such as
27 evaluation results, individualized treatment plans and progress reports. A California
28 physical therapy license was required for the position.

1 C. On or about July 12, 2004, respondent, while employed as a physical
2 therapist at Hi Desert Medical Center, performed physical therapy evaluations and
3 rendered physical therapy treatments to a physical therapy patient, as reflected in Hi
4 Desert Medical Center patient record number M00082612. Respondent's conduct in this
5 regard constituted the practice of physical therapy for compensation received or expected
6 for which a valid, unexpired, and unrevoked license issued under Physical Therapy
7 Practice Act was required.

8 D. On or about July 12, 2004, respondent, while employed as a physical
9 therapist at Hi Desert Medical Center, performed physical therapy evaluations and
10 rendered physical therapy treatments to a physical therapy patient, as reflected in Hi
11 Desert Medical Center patient record number M00054349. Respondent's conduct in this
12 regard constituted the practice of physical therapy for compensation received or expected
13 for which a valid, unexpired, and unrevoked license issued under Physical Therapy
14 Practice Act was required.

15 E. On or about July 14, 2004, respondent, while employed as a physical
16 therapist at Hi Desert Medical Center, performed physical therapy evaluations and
17 rendered physical therapy treatments to a physical therapy patient, as reflected in Hi
18 Desert Medical Center patient record number M00082612. Respondent's conduct in this
19 regard constituted the practice of physical therapy for compensation received or expected
20 for which a valid, unexpired, and unrevoked license issued under Physical Therapy
21 Practice Act was required.

22 F. On or about July 14, 2004, respondent, while employed as a physical
23 therapist at Hi Desert Medical Center, performed physical therapy evaluations, rendered
24 physical therapy treatments to a physical therapy patient, discharged the patient from
25 physical therapy and recommended that the patient be discharged and re-evaluated at Hi
26 Desert Medical Center, as reflected in Hi Desert Medical Center patient record number
27 M00054349. Respondent's conduct in this regard constituted the practice of physical
28 therapy for compensation received or expected for which a valid, unexpired, and

1 unrevoked license issued under Physical Therapy Practice Act was required.

2 G. On or about July 14, 2004, respondent, while employed as a physical
3 therapist at Hi Desert Medical Center, performed physical therapy evaluations and
4 rendered physical therapy treatments to a physical therapy patient, as reflected in Hi
5 Desert Medical Center patient record number M00152345. Respondent's conduct in this
6 regard constituted the practice of physical therapy for compensation received or expected
7 for which a valid, unexpired, and unrevoked license issued under Physical Therapy
8 Practice Act was required.

9 H. On or about July 19, 2004, respondent, while employed as a physical
10 therapist at Hi Desert Medical Center, performed a physical therapy evaluation and
11 rendered a physical therapy treatment to a physical therapy patient, as reflected in Hi
12 Desert Medical Center patient record number M00062475. Respondent's conduct in this
13 regard constituted the practice of physical therapy for compensation received or expected
14 for which a valid, unexpired, and unrevoked license issued under Physical Therapy
15 Practice Act was required.

16 I. On or about July 20, 2004, respondent, while employed as a physical
17 therapist at Hi Desert Medical Center, performed a physical therapy evaluation and
18 rendered a physical therapy treatment to a physical therapy patient, as reflected in Hi
19 Desert Medical Center patient record number M00052914. Respondent's conduct in this
20 regard constituted the practice of physical therapy for compensation received or expected
21 for which a valid, unexpired, and unrevoked license issued under Physical Therapy
22 Practice Act was required.

23 J. On or about July 26, 2004, respondent, while employed as a physical
24 therapist at Hi Desert Medical Center, performed a physical therapy evaluation and
25 rendered a physical therapy treatment to a physical therapy patient, as reflected in Hi
26 Desert Medical Center patient record number M00069514. Respondent's conduct in this
27 regard constituted the practice of physical therapy for compensation received or expected
28 for which a valid, unexpired, and unrevoked license issued under Physical Therapy

1 Practice Act was required.

2 K. On or about July 27, 2004, respondent, while employed as a physical
3 therapist at Hi Desert Medical Center, discharged a patient from physical therapy and
4 referred the patient to the critical care center at Hi Desert Medical Center, as reflected in
5 Hi Desert Medical Center patient record number M00069514. Respondent's conduct in
6 this regard constituted the practice of physical therapy for compensation received or
7 expected for which a valid, unexpired, and unrevoked license issued under Physical
8 Therapy Practice Act was required.

9 L. On or about July 29, 2004, respondent, while employed as a physical
10 therapist at Hi Desert Medical Center, conducted a patient screening of a physical therapy
11 patient, as reflected in Hi Desert Medical Center patient record number M00037521.
12 Respondent's conduct in this regard constituted the practice of physical therapy for
13 compensation received or expected for which a valid, unexpired, and unrevoked license
14 issued under Physical Therapy Practice Act was required.

15 M. On or about August 6, 2004, respondent, while employed as a physical
16 therapist at Hi Desert Medical Center, rendered a physical therapy treatment to a physical
17 therapy patient, as reflected in Hi Desert Medical Center patient record number
18 M00110282. Respondent's conduct in this regard constituted the practice of physical
19 therapy for compensation received or expected for which a valid, unexpired, and
20 unrevoked license issued under Physical Therapy Practice Act was required.

21 N. Respondent's conduct as set forth in paragraphs 16.C. through 16.M.
22 constituted the practice of physical therapy for compensation received or expected
23 without a valid, unexpired, and unrevoked license issued under Physical Therapy Practice
24 Act, in violation of Business and Professions Code section 2630.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 (Fraudulent, Dishonest or Corrupt Act)

27 17. Respondent is subject to disciplinary action under section 2660,
28 subdivision (l) of the Code in that he engaged in fraudulent, corrupt or dishonest acts which were

substantially related to qualifications, functions or duties of a physical therapist. The circumstances are as follows:

A. The facts and circumstances alleged in paragraph 16 are incorporated here as if fully set forth.

B. Between June 30, 2004, and September 20, 2004, respondent held himself out as possessing a valid, unexpired, and unrevoked license issued under Physical Therapy Practice Act and practiced physical therapy for compensation received or expected when he knew or should have known that his physical therapy license was expired.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist License Number PT 26110,
issued to John L. Fox, PT;

2. Ordering John L. Fox, PT to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;

3. Taking such other and further action as deemed necessary and proper.

DATED: April 20, 2005

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
State of California
Complainant